IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MACA.No. 1002 of 2007

OPMV.578/1998 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA
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APPELLANT/PETITIONER:

SUDHEER, KOTTACKATTU VEEDU,
NADUVATTOM P.O., PALLIPPAD.

BY ADV. SRI.K.HARILAL
SRI.R.GOPAN

RESPONDENTS/RESPONDENTS:

1. UDAYAN, CHACKATTUVADAKKATHIL,
PLAPUZHA MURI, HARIPAD.

2. SASI, MUNDAKATHIL,
PUTHUKUNDAM P.O., KARTHIKAPPALLY.

3. DIVISIONAL MANAGER, ORIENTAL INSURANCE
CO. LTD., DIVISIONAL OFFICE, THIRUVALLA.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.A.C.A.No. 1002 of 2007

JUDGMENT

Balachandran, J.

The injured in a motor accident is the appellant. He was the rider of a Motor Cycle and was hit down by the scooter driven by the first respondent, owned by the second respondent and insured with the third respondent Insurance Company. The Tribunal, on evidence, came to the conclusion that the accident occurred solely on account of the negligence of the first respondent and that respondents 1 to 3 are jointly and severally liable to pay damages to the appellant. The Tribunal awarded an amount of Rs.66,784/- as compensation and the third respondent was directed to deposit the said amount with 7.5% interest from the date of petition till realisation. It is claiming enhancement of compensation that this appeal has been filed.

2. The appellant was aged 24 at the time of the accident and it was alleged that he was a tuition teacher, earning a monthly income of Rs.4,000/-. However, there was no evidence to establish his income and therefore, the Tribunal notionally fixed his income as Rs.1,500/- per month. In the absence of evidence to prove that he was earning more than Rs.1,500/- per month, the finding of the Tribunal that income can be fixed notionally as Rs.1,500/- per month cannot be faulted. The injuries suffered by the appellant, as evidenced by Exhibit A6 wound certificate, are the following:

> "1. Bilateral LE Fort III Fracture.
>
> 2. Unilateral Right Side LE Fort I Fracture.
>
> 3. Bilateral Fracture of the Zygomatico Maxillary Complex.
>
> 4. Fracture Mid Line of Palate with Large Defect (2-3 cms in size) Posteriorly. Leakage of secretions from Nasala cavity into the oral cavity was present.
>
> 5. Bilateral condylar fracture with

fracture of the parasumphysis of the Mandible.

6. Luxated lower right and left central and lateral incisors with Dento-Alveolar fracture in the same region (Grade III Mobility of Lower left and Right central and lateral incisors)."

2. Considering the injuries suffered and the treatment undergone by the appellant, the Tribunal concluded that he has suffered loss of income for six months and has awarded Rs.9,000/- on that count. For transport to hospital, towards medical expenses and expenses of by-standers and for extra nourishment the Tribunal has awarded respectively, Rs.3,000/-, Rs.7,734/-, Rs.550/- and Rs.1,500/- on those counts. Further, for facial dis-figuration Rs.10,000/-, for pain and sufferings Rs.25,000/-, for loss of amenities Rs.5,000/- and for future loss of earning and for loss of future amenities of life Rs.9,500/- were awarded by the Tribunal. The contention of the appellant that for dis-figuration, for loss of future earnings and for loss of future amenities of life the amounts

awarded are too meagre is found to be without any substance, as no permanent disability has been caused to the appellant and no certificate also is produced to that effect. Hence, we are satisfied that no further enhancement deserves to be granted to the appellant, as proper and just compensation is already awarded by the Tribunal. All the same, it is seen that in awarding compensation of Rs.66,784/-, the Tribunal had committed a mistake in adding the compensation awarded under several counts. The compensation awarded will come to Rs.71,284/-.

In the result, we dispose of this appeal effecting modification of the compensation amount by correcting it as Rs.71,284/- in the place of Rs.66,784/-.

(J.B.Koshy, Judge)

19th June, 2007

(K.P.Balachandran, Judge)

tkv